

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
DAN GLICKMAN, SECRETARY,)	
THE UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendant.)	
_____)	
_____)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
DANIEL R. GLICKMAN,)	
)	
Defendant.)	
_____)	

NOTICE OF CLASS CERTIFICATION AND PROPOSED CLASS SETTLEMENT

TO: All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996; (2) applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA's response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of such farm credit or benefit application.

THIS NOTICE MAY AFFECT YOUR RIGHTS. IT INCLUDES INFORMATION THAT MAY REQUIRE YOUR RESPONSE. PLEASE IT READ CAREFULLY

Your rights may be affected by two lawsuits pending in this Court: Pigford, et al. v. Glickman, No. 97-1978 (D.D.C.) (PLF); and Brewington, et al. v. Glickman, No. 98-1693 (D.D.C.) (PLF).

The suits have been consolidated for settlement purposes. The plaintiffs in both suits are African American farmers who claim that the United States Department of Agriculture ("USDA") (1) discriminated against them on the basis of race; and (2) failed to investigate and/or properly respond to their complaints of discrimination in USDA farm credit and non-credit benefit programs. Plaintiffs further claim that, as a result of USDA's actions, they are entitled to money damages and injunctive and declaratory relief, and to attorneys' fees and costs. USDA denies plaintiffs' claims and has asserted a number of legal defenses in each suit.

USDA and the plaintiffs in both suits have agreed, subject to the Court's approval, that the suits should be consolidated and settled together. The parties have also agreed that a plaintiff class should be certified that would apply to both suits. That class is defined as follows:

All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996; (2) applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA's response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of such farm credit or benefit application.

(Note: Claimants who filed discrimination complaints after July 1, 1997 may still be eligible for relief under this Consent Decree. Class counsel can provide such persons with more information on this matter.)

The parties have executed a consent decree which contains the terms of their proposed settlement, and have requested that this Court approve it. The proposed Consent Decree will apply in like manner to every class member who does not timely elect to be excluded from the class (see below).

TERMS OF PROPOSED SETTLEMENT

Subject to court approval, the plaintiffs and defendant have agreed on a settlement of both the Pigford and Brewington cases under which African American farmers fitting the definition of the class described above will have an opportunity to obtain relief for the discrimination that they can prove they experienced. The settlement is in the form of a consent decree. The Consent Decree provides that persons who satisfy that class definition may nonetheless opt-out of this class settlement and pursue their claims on their own if they so desire.

The Poorman Douglas Corporation has been designated to facilitate the settlement. Those members of the plaintiff class who seek relief under the Consent Decree's terms must request a claim package from the Poorman-Douglas Corporation. The class members must complete and mail the claim package to the Poorman-Douglas Corporation within 180 days from the date on which the Court approves the consent decree.

The claim package requires that claimants provide certain information about themselves, including the reasons they believe they were the victims of discrimination and when they filed complaints about that discrimination. Plaintiffs who seek relief

under this Consent Decree must choose whether to bring their claims under either a "Track A" adjudication process or the "Track B" arbitration process. While more information about these two procedures may be obtained from the attorneys for the class, the principal differences between the two tracks are as follows:

A. Track A claims will be decided by a neutral adjudicator without an oral hearing, based solely on the claim package that the class member submits, along with any written materials submitted by USDA. Class members choosing track A would be required to show by "substantial evidence" that they experienced discrimination in a USDA credit or benefit program at any time between January 1, 1981 and December 31, 1996, that as a direct result of that discrimination they suffered economic damage, and that they had filed a complaint of discrimination with USDA between January 1, 1981 and July 1, 1997. "Substantial evidence" is a lower burden of proof than is required under Track B.

Class members who prevail under the Track A process would receive: (1) discharge of all outstanding debt to USDA that is affected by the discriminatory conduct they experienced, (2) a cash payment of \$50,000, and (3) an additional payment made directly to the Internal Revenue Service equal to 25% of the sum of the principal amount of debt forgiven and the \$50,000 (this payment to the IRS would be used to help pay any tax liability occasioned by the award).

B. Under Track B, class members' claims would be decided by an arbitrator after an oral hearing lasting not more than 8 hours,

during which both the class member and USDA could present evidence. The class member would be required to demonstrate, by a "preponderance of the evidence" that he experienced discrimination in a USDA credit or benefit program at any time between January 1, 1981 and December 31, 1996, that as a direct result of that discrimination he suffered economic damage, and that he had filed a complaint of discrimination with USDA between January 1, 1981 and July 1, 1997. The preponderance of the evidence standard is a higher one than the "substantial evidence" test that will apply to Track A claims.

Class members who succeed on their claims under Track B would be entitled to a cash payment equal to their actual damages, and forgiveness of all of outstanding USDA loans that were affected by the discriminatory conduct. Track B is not available to class members who assert only non-credit benefit claims. Class members who do not prevail on a claim under Track A or Track B will receive no monetary or injunctive relief, and have no right to appeal the adverse decision.

Class members who prevail on a claim under either track would also be entitled to additional declaratory and injunctive relief. This relief may include the return of inventory property and priority consideration for future loans.

HOW TO OBTAIN A CLAIM PACKAGE

If you decide to participate in this settlement, you must obtain a claim package. If a claim package is not attached to this Notice, you can request one by phone from the Facilitator at

toll-free 1-800-646-2873, or by mail sent to the Facilitator at P.O. Box 4390, Portland, Oregon, 97208-4390. A completed claim package must be signed by an attorney. Once you receive your claim package, you may contact class counsel to set up an appointment to meet with attorneys representing the class. Class counsel has agreed to provide you with the services of an attorney at no cost to you. In order to be considered for relief under the Consent Decree, a completed claim package must be sent to the Facilitator postmarked not more than 180 days after the entry by the Court of the Consent Decree. If you have any questions about your claim package, please contact the Facilitator at 1-800-646-2873.

SETTLEMENT HEARING

The Court will hold a hearing in Courtroom 20 of the E. Barrett Pettyman United States Courthouse, 333 Constitution Avenue, Northwest, Washington, D.C. 20001, at **10:00 a.m.** on Tuesday, **March 2, 1999**, to determine whether to approve the proposed settlement. Objections to the proposed settlement by class members will be considered by the Court if such objections are filed in writing with the Clerk of the Court on or before **February 15, 1999**. Attendance at the hearing is not necessary; however, class members wishing to be heard orally in opposition to the proposed settlement should indicate in their written objection their intention to appear at the hearing.

Class members who support the proposed settlement do not need to appear at the hearing or take any other action to indicate

their approval.

ELECTION BY CLASS MEMBERS

Persons who fall within the definition of the class may nonetheless elect to opt out of the suit and the settlement and pursue their claims against USDA independently. Whether you remain a member of the class is entirely your decision. Your two options are listed below, along with factors that might affect your decision. Either choice will have legal consequences, which you should understand before making your decision.

1. If you do NOT wish to be a member of the class, you MUST complete and return the form titled " Request for Exclusion" within 120 days from the date upon which the Consent Decree is entered by the Court. This process is called "opting-out" of the plaintiff class that is bringing these suits. If you elect to opt-out of the suit, you will NOT be entitled to share in any amount of money that may be paid or awarded to plaintiffs in these cases, and you will not be permitted to submit a claim for compensation under the Tracks A or B procedures described above. You will be entitled, however, to seek relief on your own.

2.a. If you wish to remain a member of the class, do NOT complete the "Request for Exclusion" form. (Note: As a class member, you will be required to complete your claim package. See the section above entitled "How to Obtain a Claim Package.") By remaining a member of the class, you may be entitled to a cash award and/or other relief under Tracks A or B. If, after your claim is processed under Track A or B, it is determined that you

are entitled to no relief, you will be bound by that result as well.

b. You may elect to appear by your own attorney. You may also seek to intervene individually. If at any time you think that you are not being fairly and adequately represented by the below-named Class Counsel, you may advise the Court.

PLAINTIFFS' COUNSEL

The attorneys and law firms who are acting as class counsel for plaintiffs are:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan, Pires
& Leavy, LLP
1818 N Street, N.W., Suite 700
Washington, D.C. 20036

Phillip L. Fraas
Tuttle, Taylor & Heron
1025 Thomas Jefferson Street,
N.W.
Washington, D.C. 20007

Six law firms are working with them as Of Counsel. Those lawyers and law firms are:

J.L. Chestnut
Chestnut, Sanders, Sanders
& Pettaway
1 Union Street
Selma, Alabama 36701

Gerard R. Lear
Speiser Krause
2300 Clarendon Blvd.,
Suite 306
Arlington, Virginia 22201

Othello C. Cross
Cross, Kearney & McKissic
100 South Pine Street
P.O. Box 6606
Pine Bluff, Arkansas 71611

Hubbard T. Sanders, IV
The Terney Firm
401 East Capitol Street
200 Heritage Building
Jackson, Mississippi 39201

T. Roe Frazer
Dennis Sweet
Langson, Frazer, Sweet
& Freese
201 N. President Street
Jackson, Mississippi 39201

Willie Smith
2350 W. Shaw Ave.
Suite 154
Fresno, California 93711

ADDITIONAL INFORMATION

Any questions you have concerning the matters contained in this notice (and any corrections or changes of name or address) should NOT be directed to this Court, but rather should be directed in writing to:

Claims Facilitator
P.O. Box 4390
Portland, Oregon 97208-4390

If you decide to remain a member of the class and wish to communicate with Class Counsel as your attorney in this litigation, you may do so by writing:

ALEXANDER J. PIRES, JR. ESQ.
Conlon, Frantz, Phelan, Pires
& Leavy
1818 N STREET, NW
SUITE 700
WASHINGTON, DC 20036
(202) 331-7050

You may, of course, seek the advice and guidance of your own attorney if you desire. The pleadings and other records in this litigation may be examined and copied at any time during regular office hours at the Office of the Clerk, United States District Court for the District of Columbia, E. Barrett Pettyman United States Courthouse, 333 Constitution Avenue, Northwest, Washington, D.C. 20001.

REMINDER AS TO TIME LIMIT

If you do NOT wish to be a member of the class on whose behalf these actions are being maintained, return the completed "Request for Exclusion" to the Court at the address listed on the

attached form within 120 days from date on which this Court enters the Consent Decree.

If you do not request exclusion from the class and the consent decree is approved, you must submit your claim form to the Poorman-Douglas Corporation, along with supporting documentation and a certification by class counsel, within 180 days of the date on which the Court approves the Consent Decree.

SO ORDERED.

DATE:

PAUL L. FRIEDMAN
United States District Judge

Clerk of Court
United States District Court for
the District of Columbia

Enclosure:

Request for Exclusion

REQUEST FOR EXCLUSION

READ THE ENCLOSED LEGAL NOTICE CAREFULLY BEFORE FILLING OUT THIS FORM.

The undersigned has read the Notice of Class Action, dated January 5, 1999, and does NOT wish to remain a member of the plaintiff class certified in the cases Pigford, et al. v. Glickman, No. 97-1978 (D.D.C.) (PLF); or Brewington, et al. v. Glickman, No. 98-1693 (D.D.C.) (PLF).

Signature

Printed Name

Social Security Number

Street Address

City, State, and Zip Code

Date

If you want to exclude yourself from the class, you must complete and return this form on within 120 days of the date on which the Court enters the Consent Decree to:

Claims Facilitator
P.O. Box 4390
Portland, Oregon 97208-4390

A separate request for exclusion should be completed and timely mailed for each person or entity electing to be excluded from the class.

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Plaintiffs,)	
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DANIEL R. GLICKMAN,)	
)	
Defendant.)	
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ORDER

This matter has come before the Court on the parties' Joint Motion for Preliminary Approval of Consent Decree. The motion acknowledges that any approval of the Consent Decree would be subject to the results of a fairness hearing that has been scheduled for March 2, 1999.

The purpose of the fairness hearing is to enable the parties to inform the Court of the terms of the settlement that would be effectuated by entry of the Consent Decree, and to explain to the Court why the Consent Decree would provide a fair resolution of the claims of all the plaintiffs, and to permit those class members who oppose entry of the Decree to explain to the Court the bases of their opposition to it. After considering the views of

the parties, as well as those of any dissident plaintiffs, the Court will be in a position to determine whether the Decree adequately protects the interests of the plaintiff class.

Having thus considered the parties' Joint Motion for Preliminary Approval of Consent Decree, it is hereby

ORDERED that the motion is granted and the Consent Decree is approved preliminarily. It is further

ORDERED that these cases are stayed and that the trial in Pigford v. Glickman, Civil Action No. 97-1978 (PLF) that presently is scheduled to commence on February 1, 1999 is temporarily postponed pending the outcome of a fairness hearing on the Consent Decree that shall be held at 10:00 a.m. on March 2, 1999, in Courtroom 20 of the E. Barrett Pettyman, Jr. United States Courthouse, which is located at Third Street & Constitution Avenue, N.W., in Washington D.C. And it is further

ORDERED that no term of the Consent Decree shall be effectuated unless and until the Court finally approves, executes, and enters the Consent Decree after the fairness hearing.

DATED: _____

PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

cc: Alexander J. Pires, Jr., Esq.
Conlon, Frantz, Phelan, & Pires
1818 N Street, N.W.
Suite 700
Washington, D.C. 20036

Michael Sitcov
Daniel P. Bensing
Carlotta P. Wells
Caroline Lewis Wolverton
Federal Programs Branch
Civil Division
United States Department of Justice
P.O. Box 883, Room 1022
Washington, D.C. 20044

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ORDER

This matter having come before the Court on the parties' Joint Motion to Consolidate, it is hereby

ORDERED that Pigford, et al. v. Glickman, No. 97-1978 (PLF), and Brewington, et al. v. Glickman, No. 98-1693 (PLF), are consolidated for purposes of settlement.

DATED: _____

PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

cc: Alexander J. Pires, Jr., Esq.
Conlon, Frantz, Phelan, & Pires
1818 N Street, N.W.
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DANIEL R. GLICKMAN,)	
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Defendant.)	
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ORDER

The Court having considered the proposed Consent Decree filed by the parties, as well as the parties' Joint Motion to Consolidate, it is hereby

ORDERED that the Court's October 9, 1998 Order certifying a class of plaintiffs pursuant to Fed. R. Civ. P. 23(b)(2) is hereby vacated.¹ It is further

ORDERED that, pursuant to Fed. R. Civ. P. 23(b)(3), the following class of plaintiffs is hereby certified:

^{1/} This Order does not affect the Court's October 9, 1998 Memorandum Opinion concerning plaintiffs' motion for class certification in Pigford v. Glickman, Civil Action No. 97-1978 (PLF), which remains in full force and effect.

All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996; (2) applied to United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA's response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of such farm credit or benefit application.

DATED: _____

PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

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